

AMENDED IN SENATE MAY 29, 2012
AMENDED IN SENATE APRIL 30, 2012
AMENDED IN SENATE JUNE 23, 2011
AMENDED IN SENATE JUNE 10, 2011
AMENDED IN SENATE JUNE 2, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 480

Introduced by Assembly Member Solorio

February 15, 2011

An act to amend, repeal, and add Section 1760 of the Insurance Code, and to amend, repeal, and add Section 43601 of, *and to add Section 43601.2 to*, the Public Resources Code, relating to insurance.

LEGISLATIVE COUNSEL’S DIGEST

AB 480, as amended, Solorio. Insurance: solid waste facilities.

Existing law regulates solid waste facilities and requires that any person owning or operating a solid waste landfill submit evidence of financial ability to provide for the cost of closure and postclosure maintenance, except as specified. Existing law provides that if the evidence of financial ability for closure, postclosure, or corrective action is demonstrated by use of insurance, either through an independent insurer or where the insurance carrier is established by a solid waste facility operator to meet the financial assurance obligations of that operator, the insurance mechanism may be approved by the Department of Resources Recycling and Recovery if the insurance carrier meets specified requirements.

This bill would specify that, until January 1, ~~2017~~ 2018, an insurance carrier established by a solid waste facility operator to meet the financial assurance obligations of that operator that meets all of those specified requirements shall be eligible to provide that insurance and shall not be required to be a California admitted insurer nor be required to provide the insurance through a surplus line broker. The bill would add as a requirement for approval of a solid waste facility operator meeting its financial assurance obligations by establishing an insurance carrier that the insurance mechanism not provide in excess of ~~75%~~ 50% of the financial assurance obligation that the solid waste facility operator is required to meet in the state. *The bill would also require the Department of Resources Recycling and Recovery, in consultation with the Department of Insurance, to submit to the Legislature, on or before January 1, 2016, a report on the use of the mechanisms demonstrating financial ability to provide for the cost of closure and postclosure maintenance, including, among other things, any financial liability the state may assume if the mechanisms permitted under this bill and existing law fail.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1760 of the Insurance Code is amended
2 to read:
3 1760. (a) (1) A home state insured, as defined in subdivision
4 (f) of Section 1760.1, may negotiate and effect insurance to protect
5 himself, herself, or itself against loss, damage, or liability with any
6 nonadmitted insurer.
7 (2) ~~Notwithstanding any other law, an~~ An issuer of an insurance
8 policy that meets all of the requirements of paragraph (2) of
9 subdivision (e) of Section 43601 of the Public Resources Code
10 shall be eligible to provide the insurance described in that
11 subdivision. An issuer of an insurance policy pursuant to this
12 section shall not be required to be a California admitted insurer,
13 nor be required to provide the insurance through a surplus line
14 broker.
15 (b) Every home state insured that effects insurance governed
16 by this chapter shall pay the tax imposed by Part 7.5 (commencing

1 with Section 13201) of Division 2 of the Revenue and Taxation
2 Code.

3 (c) This section shall remain in effect only until January 1, ~~2017~~
4 2018, and as of that date is repealed, unless a later enacted statute,
5 that is enacted before January 1, ~~2017~~ 2018, deletes or extends
6 that date.

7 SEC. 2. Section 1760 is added to the Insurance Code, to read:

8 1760. (a) A home state insured, as defined in subdivision (f)
9 of Section 1760.1, may negotiate and effect insurance to protect
10 himself, herself, or itself against loss, damage, or liability with any
11 nonadmitted insurer.

12 (b) Every home state insured that effects insurance governed
13 by this chapter shall pay the tax imposed by Part 7.5 (commencing
14 with Section 13201) of Division 2 of the Revenue and Taxation
15 Code.

16 (c) This section shall become operative on January 1, ~~2017~~
17 2018.

18 SEC. 3. Section 43601 of the Public Resources Code is
19 amended to read:

20 43601. (a) The evidence of financial ability shall be sufficient
21 to meet the closure and postclosure maintenance costs when
22 needed.

23 (b) The owner or operator of a solid waste landfill shall provide
24 evidence of financial ability through the use of any of the
25 mechanisms set forth in Part 258 (commencing with Section 258.1)
26 of Title 40 of the Code of Federal Regulations or through the use
27 of any other mechanisms approved by the department. However,
28 the department may adopt regulations that reasonably condition
29 the use of one or more of those mechanisms to ensure adequate
30 protection of public health and safety and the environment, but
31 shall not exclude the use of any mechanism permitted under federal
32 law. In addition, the evidence of financial ability submitted
33 pursuant to Section 43600 shall provide that funds shall be
34 available to the regional water boards upon the issuance of any
35 order under Chapter 5 (commencing with Section 13300) of
36 Division 7 of the Water Code to implement closure and postclosure
37 activities.

38 (c) The state water board or the appropriate regional water board
39 shall have access to the financial assurance funds for closure and
40 postclosure activities, and to financial assurance funds for

1 corrective action, as necessary, to address water quality problems,
2 if the owner or operator of the solid waste landfill has failed to
3 implement the required closure and postclosure activities or
4 corrective action activities.

5 (d) The owner or operator may request disbursement for
6 expenditures to conduct closure, postclosure maintenance, or
7 corrective actions from the financial assurance mechanism
8 established for that activity. Requests for disbursement shall be
9 granted by the department only if sufficient funds are remaining
10 in the financial assurance mechanism to cover the remaining
11 approved total costs of closure, postclosure maintenance, or
12 corrective actions, as appropriate.

13 (e) If the evidence of financial ability for closure, postclosure,
14 or corrective action is demonstrated by use of insurance, the
15 department may approve the insurance mechanism if it is in
16 compliance with either paragraph (1) or (2) as follows:

17 (1) The issuer of the insurance policy is either:

18 (A) Licensed by the Department of Insurance to transact the
19 business of insurance in the State of California as an admitted
20 carrier.

21 (B) Eligible to provide insurance as an excess and surplus lines
22 insurer in California through a surplus lines broker currently
23 licensed under the regulations of the Department of Insurance and
24 upon the terms and conditions prescribed by the Department of
25 Insurance.

26 (2) If the insurance carrier is established by a solid waste facility
27 operator to meet the financial assurance obligations of that operator,
28 insurance may be approved by the department that meets all of the
29 following requirements:

30 (A) The insurance mechanism is in full compliance with the
31 requirements for insurance that are specified in subdivision (d) of
32 Section 258.74 of Title 40 of the Code of Federal Regulations.

33 (B) The insurance carrier is an insurer domiciled in the United
34 States and licensed in its state of domicile to write that insurance.

35 (C) The insurance carrier only provides financial assurance to
36 the operator that has established the insurance carrier as a form of
37 self-insurance and does not engage in the business of marketing,
38 brokering, or providing insurance coverage to other parties.

1 (D) The insurance carrier shall maintain a rating of A- or better
2 by A.M. Best, or other equivalent rating by any other agency
3 acceptable to the department.

4 (E) If requested by the department, an independent financial
5 audit report evaluating the assets and liabilities of the insurance
6 carrier and confirming compliance with the statutory and regulatory
7 requirements of the state of domicile and an independent actuarial
8 opinion on the independence and financial soundness of the
9 insurance carrier by an actuary in good standing with the Casualty
10 Actuarial Society or the American Academy of Actuaries regarding
11 the adequacy of the loss reserves maintained by the insurance
12 carrier shall be submitted to the department upon application and
13 annually thereafter.

14 (F) The insurance mechanism does not provide in excess of 75
15 50 percent of the financial assurance obligation that the solid waste
16 facility operator is required to meet in the state.

17 (f) A solid waste facility operator using or proposing to use an
18 insurance company to demonstrate financial assurance may be
19 required by the department to pay a fee for the actual and necessary
20 cost of reviewing information submitted by the operator pursuant
21 to paragraph (2) of subdivision (e) up to an amount not to exceed
22 ten thousand dollars (\$10,000), unless a higher amount is mutually
23 agreed to by the operator and the department.

24 (g) The funds collected pursuant to subdivision (f) shall be
25 deposited in the Integrated Waste Management Account and shall
26 be available, upon appropriation by the Legislature, for expenditure
27 by the department to fund the review specified in subdivision (f).

28 (h) This section shall remain in effect only until January 1, 2017
29 2018, and as of that date is repealed, unless a later enacted statute,
30 that is enacted before January 1, 2017 2018, deletes or extends
31 that date.

32 SEC. 4. Section 43601 is added to the Public Resources Code,
33 to read:

34 43601. (a) The evidence of financial ability shall be sufficient
35 to meet the closure and postclosure maintenance costs when
36 needed.

37 (b) The owner or operator of a solid waste landfill shall provide
38 evidence of financial ability through the use of any of the
39 mechanisms set forth in Part 258 (commencing with Section 258.1)
40 of Title 40 of the Code of Federal Regulations or through the use

1 of any other mechanisms approved by the department. However,
2 the department may adopt regulations that reasonably condition
3 the use of one or more of those mechanisms to ensure adequate
4 protection of public health and safety and the environment, but
5 shall not exclude the use of any mechanism permitted under federal
6 law. In addition, the evidence of financial ability submitted
7 pursuant to Section 43600 shall provide that funds shall be
8 available to the regional water boards upon the issuance of any
9 order under Chapter 5 (commencing with Section 13300) of
10 Division 7 of the Water Code to implement closure and postclosure
11 activities.

12 (c) The state water board or the appropriate regional water board
13 shall have access to the financial assurance funds for closure and
14 postclosure activities, and to financial assurance funds for
15 corrective action, as necessary, to address water quality problems,
16 if the owner or operator of the solid waste landfill has failed to
17 implement the required closure and postclosure activities or
18 corrective action activities.

19 (d) The owner or operator may request disbursement for
20 expenditures to conduct closure, postclosure maintenance, or
21 corrective actions from the financial assurance mechanism
22 established for that activity. Requests for disbursement shall be
23 granted by the department only if sufficient funds are remaining
24 in the financial assurance mechanism to cover the remaining
25 approved total costs of closure, postclosure maintenance, or
26 corrective actions, as appropriate.

27 (e) If the evidence of financial ability for closure, postclosure,
28 or corrective action is demonstrated by use of insurance, the
29 department may approve the insurance mechanism if it is in
30 compliance with either paragraph (1) or (2) as follows:

31 (1) The issuer of the insurance policy is either:

32 (A) Licensed by the Department of Insurance to transact the
33 business of insurance in the State of California as an admitted
34 carrier.

35 (B) Eligible to provide insurance as an excess and surplus lines
36 insurer in California through a surplus lines broker currently
37 licensed under the regulations of the Department of Insurance and
38 upon the terms and conditions prescribed by the Department of
39 Insurance.

1 (2) If the insurance carrier is established by a solid waste facility
2 operator to meet the financial assurance obligations of that operator,
3 insurance may be approved by the department that meets all of the
4 following requirements:

5 (A) The insurance mechanism is in full compliance with the
6 requirements for insurance that are specified in subdivision (d) of
7 Section 258.74 of Title 40 of the Code of Federal Regulations.

8 (B) The insurance carrier is an insurer domiciled in the United
9 States and licensed in its state of domicile to write that insurance.

10 (C) The insurance carrier only provides financial assurance to
11 the operator that has established the insurance carrier as a form of
12 self-insurance and does not engage in the business of marketing,
13 brokering, or providing insurance coverage to other parties.

14 (D) The insurance carrier shall maintain a rating of A- or better
15 by A.M. Best, or other equivalent rating by any other agency
16 acceptable to the department.

17 (E) If requested by the department, an independent financial
18 audit report evaluating the assets and liabilities of the insurance
19 carrier and confirming compliance with the statutory and regulatory
20 requirements of the state of domicile and an independent actuarial
21 opinion on the independence and financial soundness of the
22 insurance carrier by an actuary in good standing with the Casualty
23 Actuarial Society or the American Academy of Actuaries regarding
24 the adequacy of the loss reserves maintained by the insurance
25 carrier shall be submitted to the department upon application and
26 annually thereafter.

27 (f) A solid waste facility operator using or proposing to use an
28 insurance company to demonstrate financial assurance may be
29 required by the department to pay a fee for the actual and necessary
30 cost of reviewing information submitted by the operator pursuant
31 to paragraph (2) of subdivision (e) up to an amount not to exceed
32 ten thousand dollars (\$10,000), unless a higher amount is mutually
33 agreed to by the operator and the department.

34 (g) The funds collected pursuant to subdivision (f) shall be
35 deposited in the Integrated Waste Management Account and shall
36 be available, upon appropriation by the Legislature, for expenditure
37 by the department to fund the review specified in subdivision (f).

38 (h) This section shall become operative on January 1, ~~2017~~
39 2018.

1 *SEC. 5. Section 43601.2 is added to the Public Resources Code,*
2 *to read:*

3 *43601.2. On or before January 1, 2016, the Department of*
4 *Resources Recycling and Recovery, in consultation with the*
5 *Department of Insurance, shall submit to the Legislature a report*
6 *on the use of the mechanisms pursuant to paragraph (2) of*
7 *subdivision (e) of Section 43601 for demonstrating financial ability*
8 *to provide for the cost of closure and postclosure maintenance.*
9 *The report shall, at a minimum, address all of the following:*

10 *(a) A summary of any ratings reports, audit finding, or other*
11 *information regarding an owner or operator using financial*
12 *mechanisms pursuant to paragraph (2) of subdivision (e) of Section*
13 *43601 to provide financial assurance.*

14 *(b) Whether financial mechanisms pursuant to paragraph (2)*
15 *of subdivision (e) of Section 43601 provide adequate financial*
16 *assurance to provide for the costs of solid waste landfill closure*
17 *and postclosure maintenance.*

18 *(c) The level of assurance provided by financial mechanisms*
19 *pursuant to paragraph (2) of subdivision (e) of Section 43601*
20 *relative to other mechanisms permitted pursuant to Section 43601.*

21 *(d) Any financial liability the state may assume if the*
22 *mechanisms permitted pursuant to Section 43601 fail.*

23 *(e) Any recommendations for ensuring solid waste landfill*
24 *closure and postclosure maintenance costs are properly assured*
25 *to protect the state from long-term postclosure and corrective*
26 *action costs in the event that a landfill owner or operator fails to*
27 *meet its legal obligations.*